United Nations A/HRC/29/26/Add.4

General Assembly

Distr.: General
29 June 2015

Original: English

Human Rights Council
Twenty-ninth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul

Addendum

Mission to Portugal* **

Summary

The Special Rapporteur on the independence of judges and lawyers conducted an official visit to Portugal from 27 January to 3 February 2015. The purpose of the visit was to examine achievements and challenges regarding the independence and impartiality of the judiciary and the administration of justice in the country. In the present report, the Special Rapporteur provides an overview of the legal and institutional framework and describes the main challenges faced by the justice system.

While noting that Portugal has a solid legal framework guaranteeing the separation of powers and the independence of judges and lawyers and recognizing society's positive perception of their independence, the Special Rapporteur pays attention in the present report to various concerns reported to her during the visit, which followed a major reform of the justice system started in 2014. The visit took place in the context of a serious economic crisis. While recognizing that it is impossible to assess the full impact of the various changes to the justice system, the Special Rapporteur takes note of areas where improvements can be made.

* The summary of the present report is being issued in all official languages. The report itself, contained in the annex to the summary, is being issued in the language of submission only.

** Late submission.

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Concerns were brought to the attention of the Special Rapporteur on the pace of implementation of the recent reforms, the security of the electronic system, the legal instability generated by various changes and the protection of defendants' guarantees. The Special Rapporteur notes that the reforms should be taken as an opportunity to promote greater financial and administrative autonomy of the courts and the Prosecution Service and to revisit education and training initiatives for judges, prosecutors and lawyers.

The Special Rapporteur also notes concerns about the effectiveness of the existing channels for accessing justice. Various complaints were received on the delays in obtaining legal aid and the quality of the support received, notwithstanding significant investment in legal aid. Concerns were also raised about the lack of attention given to victims of violence by the justice system, in particular, persons in detention and victims of domestic violence.

Taking into consideration those observations, the Special Rapporteurs concludes her report by calling on Portugal to: promote greater managerial and administrative autonomy of justice institutions; ensure that the Supreme Judicial Council and the Supreme Council for the Prosecution Service have adequate capacity; increase investment in promoting access to justice; ensure specific attention is given to victims of violence; and invest in the training of judges, prosecutors and lawyers.

Annex

[English only]

Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Portugal

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I. Introduction

1. The Special Rapporteur on the independence of judges and lawyers conducted an official visit to Portugal from 27 January to 3 February 2015. The purpose of the visit was to examine, in a spirit of cooperation and dialogue, achievements and challenges regarding the independence and impartiality of the judiciary and the administration of justice in Portugal.

2. During her mission, the Special Rapporteur visited the cities of Lisbon, Porto and Coimbra. Meetings were held with representatives of the main authorities in the area of justice, including the Minister of Justice and the Minister of Internal Administration, the Presidents of the Constitutional Court, the Supreme Court of Justice (also President of the Supreme Judicial Council) and the Supreme Administrative Court (also President of the Supreme Council for the Administrative and Tax Courts, the Attorney General (also President of the Supreme Council for the Prosecution Service) and the Commission for Constitutional Affairs, Rights, Freedoms and Guarantees of the Portuguese National Assembly. She also met judges and public prosecutors working in courts of appeal and first instance courts, the Ombudsman and the Director of the Centre for Judicial Studies.

3. The Special Rapporteur also met with numerous representatives of civil society, including representatives of non-governmental organizations, the Portuguese Bar Association and the unions representing magistrates and prosecutors, independent lawyers, and academics researching the functioning of the justice system in Portugal.

4. The Special Rapporteur expresses her gratitude to the Government of Portugal and, in particular, officials at the Ministry of Foreign Affairs, for preparing an extensive programme of meetings and visits with full respect for the independence of her mandate. She also thanks all those who met with her, sharing their experiences, informed opinions and concerns.

II. Legal and institutional framework

A. International obligations

5. The independence of judges and lawyers is one of the bedrocks of the rule of law and democratic rule. Portugal expresses its commitment to guaranteeing this independence through its national legislation, including the Constitution, and through the ratification of the main international and regional human rights treaties.

6. Portugal is party to most international and European human rights treaties,[1] including the International Covenant on Civil and Political Rights and the Convention for

[1] Portugal is party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto, the International Covenant on Civil and Political Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol thereto, the Convention on the Rights of the Child and the Optional Protocols thereto on the involvement of children in armed conflict, on the sale of children, child prostitution and child pornography and on a communications procedure and the Convention on the Rights of Persons

the Protection of Human Rights and Fundamental Freedoms. The country's adherence to these treaties means that it must, inter alia, recognize the obligations to guarantee the rights related to the proper administration of justice, including the principles of equality before the law, the right to an effective remedy, the right to liberty and security of the person, the presumption of innocence, the right to a fair and public hearing without undue delay by a competent, independent and impartial tribunal established by law, the fundamental procedural guarantees of persons charged with a criminal offence and the principle of legality.

7. In the Portuguese Constitution, it is stipulated that the rules and principles of international law shall form an integral part of Portuguese law, that provisions set out in ratified international agreements shall come into force in Portuguese domestic law (art. 8), and that the provisions of the Constitution and of laws concerning fundamental rights shall be interpreted and construed in accordance with the Universal Declaration of Human Rights (art. 16).

B. Constitutional provisions

8. In the Constitution of Portugal, adopted in 1976 following the country's return to democratic rule, the principle of separation of powers is expressly recognized in its article 2. In addition, in part I of the Constitution, fundamental rights and freedoms are listed, in accordance with the relevant international standards in this regard. These include guarantees of access to the law and the courts, the right to legal counsel and to be accompanied by a lawyer before any authority (art. 20), the right to life (art. 24), the right to personal integrity (art. 25) and the right to freedom and security except as a consequence of a judicial sentence (art. 27).

9. The judicial authority is regulated mainly by part III, headings V and VI of the Constitution. In part III, heading V, chapter I, general principles regarding the courts are outlined, which include provisions for the independence of the courts (art. 203), the supremacy of the Constitution (art. 204), public court hearings (art. 206) and the immunities necessary for lawyers (art. 208).

10. Part III, heading V, chapter III concerns the status of judges. It contains guarantees for judges, including the guarantee of security of tenure and that judges will not be held personally liable for their rulings (art. 216), provides for the appointment, assignment, transfer and promotion of judges (art. 217) and establishes the Supreme Judicial Council (art. 218).

C. Court structure

11. As indicated, in the Constitution, the courts are recognized as supreme authoritative bodies that administer justice in the name of the people (art. 202) and as independent and subject only to the law (art. 203), and their rulings are established as binding on all persons and bodies, public and private, prevailing over the decisions of all other authorities (art. 205). All court rulings that are not merely administrative in nature must be duly

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with Disabilities. Portugal has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. At the European level, the country is party to the European Convention on Human Rights and the European Social Charter (Revised). Portugal has also accepted the jurisdiction of the European Court of Human Rights and the competence of the European Committee of Social Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

motivated (art. 205). Court hearings are public, subject to certain exceptions, including public interest (art. 206). The Portuguese justice system has the following categories of courts: the Constitutional Court; judicial courts; administrative and tax courts; the Court of Auditors; maritime courts; arbitration tribunals; and magistrates' courts (art. 209).

12. Over the past three years, Portugal has been carrying out a major reform of its judicial system structure (see details in the section below). Decree-Law 49/2014 was issued in September 2014, to implement the Law on Judicial Organization (Law 62/2013 of 26 August 2013) establishing the rules applicable to the organization and functioning of the judicial courts.

1. Courts of first instance

13. Portugal is now divided into 23 judicial districts, with the main judicial court of each based in the capital of the respective administrative districts (with the exception of the districts of Lisbon and Porto, which are divided into three and two court districts, respectively). Each district court is split into central and local court departments. Central court departments have jurisdiction over the court district and are divided into civil sections, criminal sections and sections with specialized jurisdiction, including sections for commercial, enforcement, family and minors, criminal and labour matters. Cases not allocated to central court departments are processed by local court departments, which have general jurisdiction sections divided into civil, criminal, petty crime and local sections. The local court departments also include courts with specialized and broadened territorial jurisdiction, for example, the sentence enforcement courts, the maritime courts, the intellectual property courts, the Competition, Regulation and Supervision Court and the Central Criminal Inquiry Court.

2. Appeal courts

14. Second instance courts function mainly as appeal courts. There are five such courts in the country, in Lisbon, Porto, Coimbra, Évora and Guimarães. Second instance courts may have civil, criminal and labour sections and, depending on the volume of cases, sections specializing in family and minors, commerce, intellectual property and competition. According to their respective competence, sections examine appeals, as well as proceedings initiated against first instance judges and prosecutors, hear cases concerning international judicial cooperation on criminal matters, and review and confirm foreign judgements.

3. Supreme Court of Justice

15. The Supreme Court of Justice is the highest body in the hierarchy of courts of law, but in principle it only examines matters of law, rather than specific facts. It comprises five judges and hears cases appealed from the Court of Appeal. The Supreme Court of Justice is divided into civil, criminal, labour and dispute claims chambers; the latter tries appeals filed against the decisions issued by the Supreme Judicial Council. The support staff of the Supreme Court of Justice is currently composed of 65 judges.

4. Administrative and tax courts

16. Under the Portuguese Constitution, administrative and tax courts are also established and are governed by the Supreme Administrative Court. The role of the administrative and tax courts is to settle disputes arising from administrative and tax relations. These courts include the central administrative courts, the circuit administrative courts and the tax courts.

5. Constitutional Court

17. The Constitutional Court is also established under the Constitution and is specifically responsible for administering justice in matters of a legal and constitutional nature (art. 221). It is composed of 13 judges, 10 of whom are elected by the National Assembly and 3 co-opted by those elected. They enjoy the same safeguards as all judges, including independence, immovability, impartiality and immunity.

18. Besides ruling on conformity with the Constitution and the law, the Constitutional Court has competence in electoral matters and passes judgement in last instance on the regularity and validity of acts of the electoral procedure. It also verifies the legality of the establishment of political parties and coalitions and verifies in advance the constitutionality and legality of national, regional and local referendums. At the request of parliamentarians and as laid down in law, it also rules on appeals concerning losses of seats and elections held by the National Assembly and the regional legislative assemblies (art. 223 of the Constitution).

6. Supreme Judicial Council

19. Under the Constitution, the Supreme Judicial Council (art. 218) is attributed with the competences of appointing, assigning, transferring and promoting judges, as well as acting as the disciplinary body for the judiciary. The Council is composed of seven members appointed by the National Assembly, seven magistrates elected by their peers and two members appointed by the President of Portugal. Members of the Supreme Judicial Council have the same guarantees enjoyed by all judges. The President of the Supreme Court of Justice is also the President of the Supreme Judicial Council.

20. The Statute of the Judiciary (Law 21/85 of 30 July 1985, currently under revision) is the most important norm regulating the exercise of the judicial powers established under the Constitution. The Statute also provides guarantees of independence, protection against personal liability and security of tenure for judges (arts. 4–6, respectively).

7. Prosecution Service

21. In part III, heading V, chapter IV of the Constitution, the general role of the Attorney General is defined as that of representing the State, participating in the implementation of criminal policy, conducting penal action in accordance with the principle of legality and defending the democratic rule of law (art. 219). Public prosecutors also enjoy guarantees of independence. The Office of the Attorney General is presided over by the Attorney General, who has a term of office of six years.

22. The Statute of the Prosecution Service (Law 47/86 of 15 October 1986, currently under revision) regulates the work of prosecutors, reflecting the assurances of their independence and autonomy proclaimed in the Constitution. The appointment, transfer and promotion of prosecutors, as well as the application of disciplinary measures, is under the responsibility of the Supreme Council for the Prosecution Service. The Council is chaired by the Attorney General and is composed of all district prosecutors, seven prosecutors elected by their peers, five members appointed by the National Assembly and two by the Ministry of Justice.

8. Statute of the Bar Association

23. The rights and duties of lawyers are defined in the Statute of the Bar Association (Law 15/2005 of 26 January 2005, also under review during the time of the visit — see further comments below). The code of ethics of lawyers is part of the Statute of the Bar Association. The Bar Association has also adopted the Code of Conduct for European Lawyers, which is binding for Portuguese lawyers conducting cross-border activities.

III. Challenges to the independence and impartiality of the judiciary and the proper administration of justice

24. The overall perception in Portugal that the judiciary is independent is possibly one of the most important achievements of the transition to democratic rule in the country. Throughout the visit, multiple interlocutors not only acknowledged the overall adequacy of the legal framework protecting the independence of judges, prosecutors and lawyers, but also underlined their shared perception that the various actors in the justice system were independent. Indeed, recent studies, such as the 2015 European Union Justice Scoreboard, have indicated that the perception of independence in the country slightly increased over the past four years and placed Portugal close to the average within the European Union in this regard.[2]

25. Nonetheless, it is important to highlight that the independence of the judiciary is not a fixed achievement secured by the adoption of adequate norms and practices. Ensuring the independence of the judiciary requires permanent monitoring and identifying and tackling the multiple problems faced daily by judges, prosecutors and lawyers, as well as those who come into contact with the justice system.

26. Over the past decades, studies of the Portuguese justice system have highlighted challenges with regard to such issues as the length of proceedings and difficulties in accessing courts.[3] For example, attention was called to the time needed to resolve litigious cases before first instance civil courts: the Portuguese average was over one year according to 2012 data.[4] Statistics compiled by the European Court of Human Rights also show that violations related to the length of civil, criminal, administrative and enforcement proceedings (violations of article 6 of the European Convention on Human Rights) corresponded to over half of all violations identified in cases brought against the country in the European Court between 1959 and 2014.[5] The problem clearly mostly affects first instance courts, while at the appeal and superior levels the length of proceedings is considered to be adequate. These problems have triggered a number of reforms and initiatives, some of which are described below.

27. During the visit, various authorities and civil society representatives remarked on two recent situations demonstrating the most significant challenges currently faced by the Portuguese justice system. Firstly, Portugal had to confront a major economic depression. In May 2011, Portugal agreed a three-year economic adjustment programme with its creditors. The country exited this programme in June 2014 and is now under post-programme surveillance. The direct impact of the crisis can be seen in the clear increase in poverty levels and it is noteworthy that recent data have indicated that, in 2013, 19.3 per cent of the population was at risk of poverty,[6] the highest level in 10 years. These economic developments have obviously also directly affected public spending in all ministries and

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[2] See European Commission, *2015 EU Justice Scoreboard*, COM(2015) 116 final. Available from http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2015_en.pdf.

[3] See, for example, Conceição Gomes, *Os Atrasos da Justiça* (Fundação Francisco Manuel dos Santos, 2011); and Nuno Garoupa, *O Governo da Justiça* (Fundação Francisco Manuel dos Santos, 2011).

[4] European Commission for the Efficiency of Justice (CEPEJ), "Report on 'European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice'" (2014), p. 210.

[5] European Court of Human Rights, "Violations by Article and by State - 1959 – 2014". Available from www.echr.coe.int/Documents/Stats_violation_1959_2014_ENG.pdf.

[6] See National Institute for Statistics, "O risco de pobreza continuou a aumentar em 2013" (The risk of poverty continued to increase in 2013) (2015). Available from www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=223346392&DESTAQUESmodo=2 (Portuguese only).

public services, and in particular for those in the justice system as, for example, the salaries of judges and prosecutors decreased between 2008 and 2012[7] and the overall budgets allocated to courts decreased by 14.3 per cent between 2010 and 2012.[8] In this difficult context, tensions also reached courtrooms; the Constitutional Court, in particular, faced strong pressure from society when it considered the constitutionality of some controversial cost-reducing measures proposed by the Government. The fact that it declared the unconstitutionality of some measures was presented by many interlocutors as an important indicator of the independence of the Portuguese judiciary.

28. Secondly, in the context of the crisis and allegedly as part of the structural reforms agreed as part of the economic adjustment programme, the Government is conducting a major reform of the Portuguese justice system and, at the time of the visit, various important measures had either been in place only for a few months or were not yet fully achieved. The reported aims of these reforms included expediting court proceedings, improving efficiency and accountability and speeding up debt enforcement cases.

A. Ongoing reforms to the justice system

29. Over the past years, Portugal has taken several initiatives to simplify and streamline the functioning of its justice system and optimize the use of financial and human resources. These include investments in alternative dispute resolution, the complete computerization of the management and administration of the civil courts and successive legal reforms. Among the most recent legal measures are amendments to the Criminal Code and the adoption of the Statute of Judicial Administrators, a new Code of Civil Procedure and a law instituting the complete reorganization of the judicial system.

1. Reform through the new "judicial map"

30. As of September 2014, the geographical organization of the judicial system was entirely reformed on the basis of Law 62/2013 of 26 August 2013. The new "judicial map", as it is known, is part of an extensive reform with three main objectives: (a) broadening the territorial base of the court districts, which as a rule should coincide with the main towns and cities of Portugal; (b) setting up specialized courts at the national level; and (c) implementing a new management model for the court districts.

31. The previous division of the courts into 233 districts was based on a model recognized as outdated and impractical, as it dated back to the nineteenth century and neglected the significant political, social and economic transformations that had occurred since. The new judicial map consolidated the courts into 23 new court districts, each with a main judicial court based in the respective capital of the administrative district. Lisbon and Porto are the exceptions in that the courts in those administrative districts have been consolidated into three and two court districts, respectively.

32. Under the new structure, central court departments are divided into civil sections (as a rule, processing and judging cases with a value exceeding €50,000), criminal sections (to prepare and judge criminal cases to be heard by a collegiate court or before a jury) and sections with specialized jurisdiction, including sections for commercial, enforcement, family and minors, criminal and employment matters. The local court departments process and adjudicate cases not allocated to the central court departments and have general jurisdiction sections that may be divided into civil, criminal, petty crime and local sections.

[7] See CEPEJ, "Report on 'European judicial systems'", p. 306.

[8] See ibid., p. 33.

33. The Government informed the Special Rapporteur that the new judicial map had been drawn up during an extensive consultative process involving all actors of the justice system and took into account a pilot experiment implemented in 2008 in three districts. It also underlined the goal of changing the management model of the courts, promoting greater autonomy and establishing specific goals for and objective criteria to assess efficiency in the administration of justice at various levels. In accordance with the law, courts are managed by a management board headed by judges who administer the court jointly with a representative of the Office of the Attorney General and a judicial administrator. The Government further stressed the importance of the specialization process and the expansion of the territorial scope of specialized courts, which increased to cover 88 per cent of the territory, from 22 per cent.

34. It is clearly too early to assess the impact of the reform after only six months of implementation of the most important measures. Nevertheless, during the visit of the Special Rapporteur, concerns were expressed at the pace of implementation of the new judicial map and the capacity of the new system to properly respond to the newly established goals. It was reported that some courts had been installed in temporary and unsound buildings, although the Government informed the Special Rapporteur that, of the three courts based in temporary buildings, one had already been transferred to a new facility. Concerns were also raised with regard to the process of specialization and the pace of the establishment of the various specialized courts, as it was alleged that some specialized magistrates did not have the necessary experience of the fields that they were to cover. Similarly, it was indicated that, despite the specialization of courts in the first instance, the specialization could not be fully implemented at the higher levels. The Special Rapporteur welcomes information received according to which the Centre for Judicial Studies has improved specialized training for judges and magistrates.

35. Despite a reported two-year-long consultation process leading to the formulation and adoption of the new judicial map, civil society groups and experts have questioned the openness of the consultation. Some expressed concern that placing the courts in the capitals of the administrative districts would result in parts of the population living in remote areas being farther from the courts and about the lack of consideration given to alternatives to facilitate access through, for example, mobile courts, convening on an ad hoc basis in remote areas.

36. The most obvious problem faced in the transition to the new judicial map was the collapse of CITIUS, the country's electronic system for the civil courts. Although Portugal is one of only 12 countries within the Council of Europe to have achieved complete computerization of civil justice courts,[9] progress which was certainly important in promoting greater accessibility and possibly in reducing delays, the existing electronic platform did not adequately support the redistribution of court proceedings during the transition to the new judicial map. This resulted in the paralysis of the courts for up to a month and a half when the judicial year started on 1 September 2014.

37. The Government clarified that the problems related to the electronic system had been solved and that the system was fully in place again by 30 December 2014. It also noted that it had launched a disciplinary inquiry to identify responsibilities and adopted a specific law[10] to allow for the extension of deadlines of ongoing proceedings affected by the breakdown. Nevertheless, it is evident that the system's collapse generated widespread doubts about the preparatory process for the reforms and the overall sustainability of this

[9] See CEPEJ, "Report on 'European judicial systems'", 2014, p. 126.

[10] Decree-Law 150/2014 of 13 October 2014.

vital electronic system, which, despite having been praised as an important achievement in the recent past, still requires systematic investment and adaptation.

38. Additional concerns were raised with regard to the adequate protection of the mass of electronic data, in particular given its confidential nature. The Ministry of Justice, through the Institute for Justice Financial Management and Infrastructures, is currently responsible for the management and maintenance of the electronic system. Following the crisis, some judges and legal experts publicly voiced their concern about the fact that an institution within the executive branch continues to administer the entire electronic database of the courts, creating avenues for inadequate service and improper interference. Indeed, although officials of the Ministry of Justice have assured the public that they do not have direct access to the data, they were directly involved in the recovery and re-establishment of the data system.[11]

39. The Special Rapporteur believes that the management and maintenance of the electronic system of the database of the courts should be under the sole responsibility of the judicial bodies. This independence from the executive will enhance the independence of the entire judicial system and its accountability, in particular regarding the management of confidential information.

2. Other important legal reforms

40. In addition to promoting the complete reorganization of the justice system, the Government also recently implemented various additional legal reforms. These include the adoption of a new Code of Civil Procedure (Law 41/2013 of 26 June 2013) and changes in norms for insolvency, both aiming at promoting greater efficiency in the justice system. For instance, the new Code of Civil Procedure establishes that a court hearing cannot be postponed without justification. It also simplifies the procedures for the enforcement of judicial orders and establishes important punitive measures for unjustified acts aimed at slowing down proceedings.

41. Another measure taken to speed up proceedings was the adoption of an extrajudicial procedure prior to enforcement, through Law 32/2014 of 30 May 2014. The procedure enables a creditor with a pending writ of execution to request that an enforcement agent trace a debtor's assets so as to verify whether he or she has assets that may be seized before the creditor lodges the corresponding writ of execution. While recognizing the contribution of this measure to alleviating the pressure on the courts, some lawyers indicated their concern at the facilitated access to multiple databases by enforcement agents and the possible exploitation of these mechanisms for financial gain.

42. Various amendments were adopted to reform both the Criminal Code and the Code of Criminal Procedure.[12] Some of these were also aimed at simplifying and expediting proceedings; in particular Laws 19/2013, 20/2013 and 21/2013 allow for greater possibilities for summary enforcement of measures in specific cases. One of the changes introduced created the possibility of using testimonies collected in the preliminary stages of investigation at the trial stage and eliminated the possibility of appealing against prison

[11] See Pedro Sales Dias, "Juízes acusam Governo de gerir o Citius contra lei que atribui esse poder a magistratura" (Judges accuse the Government of managing Citius contrary to the law, which gives that power to the judiciary"), *Publico*, 18 October 2014. Available from www.publico.pt/sociedade/noticia/juizes-acusam-governo-de-gerir-o-citius-contra-lei-que-atribui-esse-poder-a-magistratura-1673293 (Portuguese only).

[12] These include Law 56/2011 of 15 November 2011, Laws 19/2013, 20/2013 and 21/2013 of 21 February 2013, Law 60/2013 of 23 August 2013, Law 2/2014 of 16 January 2014, Law 59/2014 of 26 August 2014, and Law 69/2014 of 29 August 2014.

sentences of less than five years handed down by appeal courts. Some legal experts expressed concern with regard to both measures and their possible impact in weakening due process guarantees for defendants. For example, it was noted that the fact that a prison sentence of less than five years handed down by an appeal court, which followed an acquittal from a first instance court, could no longer be appealed may in practice violate the right to a review by a higher instance.

43. The Special Rapporteur welcomes the efforts of the Government to speed up and simplify proceedings, given the notorious issues in the past regarding delays in the justice system. Nevertheless, she takes note of the concerns brought to her attention by lawyers and judges in relation to the risks of weakening defendants' due process rights and guarantees. She also takes note of the concerns raised with regard to the instability generated by the frequency of changes to some laws, such as the Criminal Code, which has been changed on 35 occasions since 1982, and the Code of Criminal Procedure, which has been amended 26 times since 1987. A 2011 study already noted that the excessive number of legal reforms and the lack of the necessary attention given to the quality of the new norms, and their potential impact, constituted a serious problem in the country.[13] Even if some legal changes are timely and aimed at bringing norms into accordance with international and regional agreements, continued changes can be very problematic, not only because they can complicate the work of judges, prosecutors and lawyers, but also because they obviously make it more difficult for the public in general to understand norms and proceedings.

B. Financial administration of justice

44. One of the main goals of the new judicial map is the promotion of a new management model for the court districts. This model ensures greater involvement of the management boards in the administration of the courts. Judges and prosecutors are tasked not only with the management of resources allocated to their areas of work, but are encouraged to establish targets and can request and propose changes. The recent reform also creates consultative councils composed of representatives not only from the local justice community, but also local authorities and civil society. The Special Rapporteur would like to highlight that financially empowering the courts and the Prosecution Service will be crucial for the success of the judicial reform. The lack of an effective mechanism to ensure accountability for the efficient administration of justice institutions is also an important concern to be addressed; such a mechanism would promote a more efficient and accessible justice system.

45. While welcoming the steps taken to increase the involvement of the courts and Prosecution Service in the management of their daily activities, the Special Rapporteur notes that the overall administration of budgets for the justice system continues to be done mostly by entities within the Ministry of Justice. The Ministry is ultimately responsible for the preparation of overall budgets for all justice institutions, the allocation of resources to specific courts and the overall evaluation of the management of resources. Such a model is not an exception in Europe.[14] Nevertheless, during her visit, concerns were expressed to the Special Rapporteur regarding the negative impact of the lack of proper facilities and material conditions of work on the activities of courts, which allegedly results from the lack of financial independence. The Special Rapporteur was also told that the productivity of judges, especially in first instance courts, was affected when they lost their assistants or

[13] See Garoupa, *O Governo da Justiça*, p. 76.

[14] See CEPEJ, "Report on 'European judicial systems'", p. 39.

when the latter were transferred or reallocated by the Ministry of Justice without prior consultation. The Special Rapporteur also wishes to underline that the majority of the complaints expressed were linked to the functioning of the first instance courts, which are administered by the Ministry of Justice.

46. Recognizing that clear guarantees for judicial independence are established under Portuguese legislation and acknowledging the Government's expressed intentions of promoting greater autonomy in the management of the courts, the Special Rapporteur wishes to encourage the implementation of practical measures to promote the overall budgetary, financial and administrative autonomy and independence of the courts and the Prosecution Service, in line with the aims of the judicial reform. Centralizing the judiciary's financial and administrative functions within the Ministry of Justice seems to undermine their independence and limit the possibility of holding judges and prosecutors accountable for the efficient exercise of their functions.

47. According to some judges and prosecutors, the scarcity of financial and material resources resulting from the economic crisis affecting the country has had an impact on the management of their daily activities. For example, various prosecutors and judges noted with concern the increasing difficulties in receiving the necessary technical and human resources to support them in the performance of their work. The Ministry of Justice recently announced the hiring of 600 additional support staff in response to these concerns. The lack of expert technical assistance also very often creates difficulties for prosecutors, who frequently need to request support from public officials working in other State institutions, thereby leading to undue delays in the exercise of the prosecutors' functions. Some public prosecutors further reported facing difficulties in planning and executing their work, as sometimes annual budgets did not fully cover expenditure over the entire year, obliging them to negotiate additional allocations during the course of investigations. Additionally, difficulties in long-term planning can particularly impair the implementation of more complex initiatives, such as those pertaining to collective rights. The specific interest of the Government in initiatives which could generate resources, such as the creation of a specific task force to expedite the processing of the potentially most valuable fiscal cases within the fiscal and administrative justice system, can also generate distortions.

C. Role of the Supreme Judicial Council and the Supreme Council for the Prosecution Service

48. During the period of the visit, as a consequence of the reorganization of the justice system, reforms to the Statute of the Judiciary and the Statute of the Prosecution Service were under discussion. These reforms offer an important opportunity to strengthen the roles of the Supreme Judicial Council and the Supreme Council for the Prosecution Service, for example, by establishing the greater involvement of these two entities in the formulation and management of the overall budgets of courts and prosecution offices. Unfortunately, the draft proposals for the new statutes were not publicly available at the time of the writing.

49. Both the Supreme Judicial Council and the Supreme Council for the Prosecution Service are mandated, inter alia, to conduct routine evaluations, implement disciplinary procedures and manage the promotions of judges. Regardless of the results of the reform and the possible involvement of these entities in the financial administration of the justice system, ensuring adequate human and technical capacity to both councils is crucial for the promotion of efficiency and accountability within justice institutions. In this regard, the Special Rapporteur noted with concern that some routine evaluations of judges were reportedly conducted after significant delay owing to the limited capacity of the existing evaluation mechanisms.

50. Some judges reported to the Special Rapporteur their concern about the potentially negative impact of some inspection methods, which appeared to overemphasize specific quantitative indicators, such as the precise fulfilment of procedural deadlines, while overlooking information on success in the conclusion of cases, as well as ignoring some differences in the personal situation of judges (including health-related situations or pregnancy). While she recognizes the need to prevent judicial delays, the Special Rapporteur understands that overemphasis of deadlines could, in some situations, affect the delivery of justice, as judges could be compelled to ensure that the cases under their control meet the time frames established, at the expense of other essential guarantees.

51. The Association of Judges also expressed concern with regard to the current composition of the Supreme Judicial Council, which currently includes a majority of appointees who are not selected by their peers. The Special Rapporteur endorses this concern and calls for adjustment to the model for appointment, taking into account, for example, the 2010 recommendation on judges of the Committee of Ministers of the Council of Europe, which suggested that not less than half the members of such councils be judges elected by their peers.

52. A recent conflict between the executive branch and the Supreme Council for the Prosecution Service regarding the appointment of a Portuguese prosecutor to work in Eurojust (the entity created to support and strengthen coordination and cooperation between national investigating and prosecuting authorities within the European Union) was also brought to the attention of the Special Rapporteur.

53. The procedure for appointing a prosecutor to serve on Eurojust was, until 2014, regulated by Law 36/2003 of 22 August 2013. Under the law (art. 3), the Minister of Justice and the Minister of Foreign Affairs were to appoint the prosecutor, at the suggestion of the Attorney General in consultation with the Supreme Council for the Prosecution Service. In 2013, this process reportedly reached a stalemate as the Minister of Justice questioned the reappointment of the prosecutor already posted to Eurojust, required the consideration of alternative candidates and suggested two other names to the Supreme Council. The Council members refused to accept the suggestion of the Minister and maintained its decision to renew the term of the incumbent representative. During some nine months, the tension persisted and ultimately led to the departure of the incumbent prosecutor and the appointment of one of the candidates originally suggested by the Ministry of Justice. In 2014, the Minister of Justice amended the article regulating the appointment process through Decree-Law 20/2014 of 10 February 2014, eliminating the involvement of the Supreme Council for the Prosecution Service in proposing the candidates for membership of Eurojust and instead assigning the nomination of three candidates to the Attorney General.

54. Some prosecutors shared with the Special Rapporteur their deep frustration at the exclusion of the Supreme Council for the Prosecution Service from the appointment process, particularly considering the overall tensions between the Council and the Ministry of Justice in 2013. They underscored the risks of attributing to the executive branch the role of ultimately deciding on the appointment of an official whose tasks very frequently may involve investigating crimes of corruption, which can involve the national authorities.

D. Lawyers

55. During her visit, the Special Rapporteur looked into the proposal of reforming the Statute of the Bar Association. She noted that the presentation in early 2015 of a proposal for a new statute of the Bar Association gave rise to the tensions between the Ministry of Justice and the Bar Association, which she views as a matter of concern. While unable to examine the content of the bill, which was still under discussion during the visit, the Special

Rapporteur underlines that it is essential that the design and adoption of a new statute of the Bar Association be done with the meaningful participation of the legal profession. Regardless of the nature of the revisions, it is fundamental that the absolute independence of the bar be guaranteed. As stated by in the Basic Principles on the Role of Lawyers, the State must abstain from any interference in the establishment and functioning of professional associations of lawyers.

E. Access to justice

56. Legal aid is both a right in itself and a precondition for the exercise and enjoyment of a number of fundamental rights, including the right to a fair trial and the right to an effective remedy. The European Convention on Human Rights, regional jurisprudence and resolutions adopted in the European context[15] clearly encourage States to develop legal aid systems. Since Portugal has faced a clear increase in poverty levels over the past four years, the impact of the costs related to access to the justice system need specific attention to prevent them from becoming an obstacle to accessing justice, which would affect precisely the sectors of the population which may need legal aid the most. The Special Rapporteur welcomes the Government's new initiative to assess the legal aid system's gaps and to tackle the difficulties identified in order to improve its efficiency and equity.

57. Access to law and justice is enshrined in the Constitution (art. 20) and governed by Law 34/2004 of 29 July 2004, amended by Law 47/2007 of 28 August 2007. In accordance with the legal framework, no one should be prevented from exercising or defending their rights because of their social or cultural status, or lack of financial means; legal protection in the process for obtaining legal advice (prior to formal court proceedings) and legal aid (including for alternative dispute resolutions) are also provided for. Such legal protection may be granted to Portuguese citizens and citizens of other European Union member States, as well as foreign nationals, including those without valid residential permits, when their respective countries provide similar protection for foreign nationals.

58. In 2012, the Government reported spending an average of €5.26 per inhabitant on its legal aid system, which is similar to some other countries in the region (despite a great variation of expenditure levels between States, which makes this data difficult to compare).[16] Eligibility for legal aid is determined by the Institute for Social Security. Once a request is accepted, the aid is provided by a lawyer affiliated to the Bar Association or a court official who has volunteered for inclusion on a special register for that purpose. For those obtaining aid, the costs of proceedings are exempted or reduced, depending on the economic situation of the beneficiary.

59. The Special Rapporteur is concerned about reports from civil society representatives and lawyers indicating that the cost of legal proceedings had increased in recent years and that the eligibility criteria for obtaining legal aid were too narrow. For example, persons with very limited financial resources would not be eligible for legal aid once the value of their home had been taken into account in the assessment of their financial situation. Complaints about excessive delays in the designation of a lawyer and the quality of the assistance provided were also reported.

60. Complaints were also made about the fact that the piecemeal division of responsibilities for the provision of legal aid between the justice system, the Institute for

[15] See, for example, Council of Europe resolution (76) 6 on legal aid in civil, commercial and administrative matters, resolution (78) 8 on legal aid and advice and recommendation No. R (93) 1 on effective access to the law and to justice for the very poor.

[16] See CEPEJ, "Report on 'European judicial systems'", p. 76.

Social Security, the Bar Association and the Prosecution Service seems to contribute to the system's inefficiency and unacceptable delays in the effective designation of a lawyer. Moreover, according to some lawyers and civil society representatives, owing to the comparatively low remuneration, the legal aid system only attracts lawyers with less experience and fewer qualifications.

61. The Government informed the Special Rapporteur that the system of legal aid has received satisfactory evaluations and that, in 2013, the Institute for Social Security calculated that 72.2 per cent of the legal aid requests received were accepted. It also reported that the eligibility criteria in place had been revised in order to broaden eligibility, clarifying that it factors in the combination of the household income, accumulated capital and permanent expenditures, while noting that the possession of a home had a limited impact only on this calculation. Furthermore, it noted that, to facilitate understanding, applicants could use an online simulator to assess their eligibility for legal aid.

62. With regard to complaints about the delays in obtaining legal aid, the Government reported that, in most cases, these delays resulted from applicants' failing to provide the necessary documentation for obtaining it. It also noted that the Institute for Social Security had been involved in determining eligibility since 2000 (previously the system had been managed entirely by the courts) precisely in order to expedite and facilitate access to legal aid services, as the Institute for Social Security has the necessary expertise and knowledge. The Government further reported that the Bar Association, as an independent entity, was responsible for ensuring and monitoring the quality of the legal support provided. Furthermore, a mechanism for evaluating the overall functioning of the legal aid system composed of representatives from the Bar Association, the Institute for Social Security and Ministry of Justice was established in 2008 and the first evaluation report was presented in 2009.

63. While she recognizes the importance of the various efforts taken to expand access to, and ensure the quality of, the legal aid system, the Special Rapporteur notes the importance of further and more systematic evaluation of how it can be improved. For example, she observes that, even if delays may be related to applicants not providing adequate documentation, it is still necessary to identify how the process can be simplified. To address problems relating to the piecemeal division of responsibilities and variations in the quality of legal aid, she suggests evaluating alternatives, such as establishing institutional bodies for public defence. The Special Rapporteur was informed that this alternative is under evaluation as part of the legal aid system assessment currently under way.

64. The Special Rapporteur also received complaints concerning the difficulty of understanding judicial decisions and proceedings. Legal experts and civil society representatives noted that, sometimes, the use of excessively complex language could, for instance, make judicial measures unintelligible to victims. In this regard, she was also informed of efforts to promote more succinct decisions within the justice system. On another issue, judges and prosecutors noted that they needed more professional support in communicating with the media. As most judicial institutions do not receive such support, members of the judiciary sometimes struggle to convey information on their work and to cope with media demands.

F. Victims of violence

65. Obstacles to accessing justice can have a particularly harmful impact on sectors of the population particularly vulnerable to violence, such as persons in detention, women, children and elderly people. When describing challenges posed in accessing lawyers and legal aid, civil society representatives and legal experts expressed their concern about the

situation of persons in detention. According to them, the guarantees of access to a lawyer during the time of detention and throughout the serving of sentences were not adequately ensured, often exposing persons in detention to poor conditions and sometimes even to abuse.

66. Concerns regarding the conditions in Portuguese prisons have already been expressed by international and European human rights protection mechanisms. In 2012 and 2013, respectively, the Human Rights Committee and the Committee against Torture expressed concern about, inter alia, the recurrent use of and excessive length of pretrial detention, physical ill-treatment and other forms of abuse at the hands of prison guards, as well as the poor conditions in certain prisons (see CCPR/C/PRT/CO/4 and CAT/C/PRT/CO/5-6). The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited the country in 2012 and expressed a similar concern regarding increasing overcrowding in prisons and the lack of effective access to legal assistance for persons detained by law enforcement officers.[17] Recommendations from these various bodies include a call for ensuring access to a lawyer from the moment police custody starts. In order to tackle the problem of pretrial detention, the Human Rights Committee also recommended reducing the length of investigations and legal procedures, improving judicial efficiency and addressing staff shortages (see CCPR/C/PRT/CO/4, para. 9).

67. The Special Rapporteur shares the concerns previously expressed by other human rights mechanisms regarding the situation of prisons. To address situations relating to the conditions of detention and the ill-treatment of persons deprived of their liberty, it is essential that access to lawyers be ensured and that prosecutors pay specific and systematic attention to the situation of such persons and the conditions in detention facilities. While noting the recent efforts of the Government to expedite legal proceedings, the Special Rapporteur notes that more attention should be paid to cases where the use of pretrial detention could be excessive.

68. Domestic violence was acknowledged by authorities and civil society as a great concern in Portugal. Concerns were expressed about the response of the justice system to violent incidents affecting children, women and the elderly. The Committee on the Rights of the Child, the Committee against Torture and the Human Rights Committee have recently recommended that the Government invest in the effective investigation and prosecution of cases of domestic violence (see CRC/C/PRT/CO/3-4, CAT/C/PRT/CO/5-6 and CCPR/C/PRT/CO/4).

69. The Government reported to the Special Rapporteur that, in 2007, article 152 of the Criminal Code was amended and that measures to protect victims of domestic violence were thus specified therein. Efforts to prevent and respond to domestic violence are also detailed in the national plan against domestic and gender-based violence, which includes measures for prevention, awareness-raising and education, as well as protection for victims and promotion of their social integration. The fifth version of the plan (2014–2017) is currently being implemented and, given the multidisciplinary nature of the issue, the implementation is supported by a working group composed of representatives from various government entities, including representatives from the Office of the Attorney General and the Supreme Judicial Council, as well as civil society organizations.

70. Despite these initiatives, various concerns about the impact of violence and the alleged lack of adequate responses to victims in some cases were also reported to the

[17] See Council of Europe, Report to the Portuguese Government on the visit to Portugal carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf (2013) 4 (2012), p. 16.

Special Rapporteur. In 2013, 40 women were reportedly killed by their partners, ex-partners and close family members, and 46 attempted murders against women were recorded by civil society in Portugal.[18] The Portuguese Association for the Protection of Victims, which directly cooperates with the Government to promote assistance for victims, reported a significant increase in the number of cases of violence against the elderly, pointing to the lack of capacity of those professionals who should promptly intervene in these situations.[19] The same association also noted that responses to violence against children are also frequently inadequate. Accordingly, children's involvement in judicial proceedings is often a source of secondary victimization, mostly owing to repeated questioning. It further noted the limited use of protection orders and foster-care alternatives. Lastly, it indicated that the entities specialized in child welfare, the Child and Young Persons Protection Commissions, were overloaded, as various institutions tended to systematically refer their cases to them.

71. In a recent and detailed study[20] on court rulings regarding domestic violence, the limited capacity of prosecutors and judges in processing and sharing data on situations of domestic violence, the particular invisibility of violence against the elderly, children or persons with disabilities, the lack of attention given to the victims' needs and the excessive focus on their testimony in the processing of cases, which could lead to their frustration and re-victimization, were underscored, among other issues. In the same report, the urgency of investing in the capacity of judges and prosecutors was emphasized, in order to ensure not only a good understanding of the relevant national and international norms but also the social problems surrounding their implementation.

72. The Special Rapporteur notes that the proper education and awareness-raising of judges and prosecutors are paramount for a better performance of judicial actors in the treatment of all victims of crimes. This is especially needed as a means to avoid the reproduction of prejudices in court rulings or the adoption of contradictory measures, for instance in relation to custody, which could facilitate the access of known aggressors to their victims. The Special Rapporteur appreciates the efforts made by the Centre for Judicial Studies in providing training that pays particular attention to human rights and vulnerable groups.

G. Education, training and capacity-building

73. In addition to the promotion of law and policy reforms, the education, training and capacity-building of judges, prosecutors and lawyers is essential for fully transforming the practices of the judiciary. As noted above, some concerns exist with regard to the preparation of judges and prosecutors assigned to specialized courts and on the capacity of judicial actors to communicate and properly respond to the needs of victims of violence. Addressing these challenges requires continued investment in capacity-building both for those already active in the justice system and for those who are being recruited.

74. In Portugal, the Centre for Judicial Studies is the main institution responsible for the initial and continuing training of judges and public prosecutors. Created in 1979, the Centre operates under the aegis of the Ministry of Justice, but has administrative autonomy. The Centre plans its activities in consultation with the Supreme Judicial Council, the administrative tribunals and the Supreme Council for the Prosecution Service, providing

[18] See Amnesty International, *Report 2014/15 – The state of the world's human rights* (London, 2015), p. 299.

[19] See the Association's submission to the second cycle of universal periodic review of Portugal.

[20] See Conceição Gomes and others, *Estudo Avaliativo das Decisões Judiciais em Matéria de Violência Doméstica* (2014,Centro de Estudos Sociais da Universidade de Coimbra).

specialized training initiatives whenever requested by these various entities. Public prosecutors and judges undertake their initial year of training together and are then separated into different groups according to their preferences or marks. Every year, the Centre also provides many specialized courses, seminars and one-day courses both in situ and through videoconference.

75. While recognizing the importance and extent of the training activities offered by the Centre for Judicial Studies and its significant contribution since the transition to democracy, legal experts and civil society representatives indicated their concern about the reported legal formalism privileged in the training activities offered by the Centre, and the lack of attention given to ongoing social challenges and to disciplines that are not exclusively legal.[21] Concerns were also voiced about the reported limited attention given to human rights law, not only in the Centre but also in some Portuguese law schools.

76. In a previous annual report (see A/HRC/14/26, para. 97), the Special Rapporteur noted that judges, prosecutors, public defenders and lawyers must be adequately educated and informed on a regular and continuing basis of new developments in international human rights law, principles, standards and case law. In this regard, she wishes to recall the importance of periodically revising existing training instruments and university courses and curricula in order to better respond to social challenges and better integrate multiple sources of knowledge into the education and training of judges and prosecutors.

IV. Conclusions

77. **Portugal has repeatedly expressed its commitment to guaranteeing the full independence of the judiciary through its national legislation and the ratification of the main international and regional human rights treaties. The overall positive perception of the independence of the judiciary in the country indicates that these commitments are mostly reflected in practice. Despite this favourable context, the promotion of the independence of judges, prosecutors and lawyers and of the proper administration of justice requires constant attention and further investment so that judicial actors and institutions can better respond to emerging and remaining challenges.**

78. **The visit of the Special Rapporteur took place at a moment of intense debate on the functioning of the Portuguese justice system, as the Government was implementing major reforms in the administration and distribution of courts. At the same time, over the past four years, the entire country has been confronted with a major economic crisis that also has affected justice actors and institutions, as public resources became scarce. The Special Rapporteur wishes to highlight the importance of the role played by the Constitutional Court in preserving the integrity of the rights established in the Constitution, in particular during the economic crisis.**

79. **It is too early to fully assess the impact of the various recent reforms. However, concerns were expressed about the pace of implementation of these reforms, access to justice, the security of the electronic system, the legal instability generated by the many and frequent amendments to legislation and the possible weakening of guarantees for defendants.**

80. **The reform process also opens up important opportunities for discussing again the roles of judges and prosecutors in the administration of their own offices.**

[21] See, for example, Sousa Santos Boaventura, *Para uma Revolução Democrática da Justiça* (2014), p. 117.

Reinforcing the autonomy and capacity of the Supreme Judicial Council and the Supreme Council for the Prosecution Service is vital for promoting greater efficiency and accountability. Reforms also represent an opportunity to revisit education and training initiatives for judges, prosecutors and lawyers, in order to update them and ensure that human rights are adequately represented.

81. With the increase in poverty levels, it is essential that Portugal continue to pay the utmost attention to the effectiveness of the existing channels for accessing justice, in particular concerning vulnerable groups. Despite investments in legal aid, concerns were expressed with regard to delays in obtaining legal aid and the quality of the support received. In this regard, victims of violence deserve specific attention in all efforts aiming to improve access to justice, as the lack of particular attention can lead to victims of domestic violence being re-victimized during legal proceedings, and the lack of the systematic support of lawyers can render persons in detention more vulnerable to abuse. The Special Rapporteur is encouraged to hear that the legal aid system is being assessed with the view to improving its efficiency.

V. Recommendations

A. Enhancing the managerial administrative independence of justice institutions

82. The ongoing reforms should be seized as an opportunity to evaluate ways in which the overall budgetary, financial and administrative autonomy of the courts and the Prosecution Service can be enhanced. In addition to promoting operational autonomy within courts, empowering actors within the justice system with the management of the resources required in their daily activities is important to promote efficiency and accountability. The Supreme Judicial Council, the Supreme Council of the Administrative and Fiscal Magistracy and the Supreme Council for the Prosecution Service could play a greater role in the preparation of overall budgets for the justice system, the allocation of resources to specific courts and the overall evaluation of the management of resources.

B. Ensuring the adequate capacity of the oversight bodies within the judiciary

83. The effective functioning of justice requires the State to continuously ensure the human and technical capacity of the Supreme Judicial Council, the administrative and tax judiciary and the Prosecution Service. The reform of the statutes of those entities must be thoroughly debated, given their central role in the promotion of the independence, efficiency and accountability of the justice system. Attention must be paid to eliminating delays and ensuring full transparency and fairness in the implementation of all disciplinary and evaluative processes.

C. Increasing investment in the promotion of access to justice

84. Further investments are required to ensure that mechanisms providing access to justice reach those who need it the most. Eligibility criteria and, in particular, documentation requirements for the provision of legal aid must be revised to avoid these becoming obstacles to obtaining legal aid. Systematic evaluations of the quality and effectiveness of the legal aid system must be carried out and their results

thoroughly discussed. In that context, consideration should be given to the possible establishment of an office for public defence in the country.

D. Paying specific attention to victims of violence

85. Particular attention must be paid to all obstacles preventing victims of violence from accessing justice. Access to a lawyer from the moment police custody starts, as well as during the serving of sentences, must be systematically guaranteed in practice. Attention should continue to be paid, and efforts made, to limit the use of pretrial detention and to improve conditions of detention, as recommended by other human rights protection mechanisms.

86. Judges, prosecutors and lawyers must continue to receive adequate training in order to better respond to domestic violence cases. Judicial proceedings must be carefully revised in order to prevent the re-victimization of victims. Investments can also be made in raising awareness of the existing mechanisms to report domestic violence, of the impact of all forms of violence, including gender-based violence, on society and of the existence of violence against children, persons with disabilities and the elderly.

E. Investing in the training of judges, prosecutors and lawyers

87. Investments must be made to review and update the education, training and capacity-building curricula, programmes and courses for lawyers, judges and prosecutors. This should not only include sustained attention being given to reviewing the work of the Centre for Judicial Studies, but also the courses offered by Portuguese law schools, in order to keep up-to-date with the latest case law and developments in standards. Attention must be paid to ensuring a multidisciplinary approach that is not confined to formal legal content and enables a good understanding of the social, economic and cultural dimensions of the problems brought before the courts. Attention must also be paid to enhancing the understanding of international human rights law, principles, standards and case law.